

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 26, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:08MD-052

MAUI

Grant of Term, Non-Exclusive Easement to Napili Kai, Ltd.
for Walkway, Stairs, Shower Station, Concrete Pier Block
Remnants and Landscaping Purposes, Kaanapali, Maui, Tax Map
Key: (2) 4-2-2:seaward of 4, 5, 7 and 4-3-2:seaward of 26,
27, 28.

APPLICANT:

Napili Kai, Ltd., a Hawaii corporation whose business and mailing
address is 5900 Lower Honoapiilani Road, Lahaina, Maui, 96761.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kaanapali, Lahaina,
Maui, identified by Tax Map Key: (2) 4-2-2:seaward of 4, 5, 7 and
4-3-2:seaward of 26, 27, 28, as shown on the attached map labeled
Exhibit A.

AREA:

4,022 square feet, more or less.

ZONING:

State Land Use District:	Urban
County of Maui CZO:	Multifamily

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing walkway, stairs, shower station, concrete pier block remnants and landscaping over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Sixty-five (65) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During a recent site visit (January 24, 2006), Office of Conservation and Coastal Lands (OCCL) staff observed the subject concrete pier block remnants and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u> x </u>	NO	<u> </u>
Registered business name confirmed:	YES	<u> x </u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u> x </u>	NO	<u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

The Applicant is planning to enlarge and improve its existing swimming pool. The County of Maui requires a shoreline certification as part of the Special Management Area Use Permit process. The land surveyor discovered several encroachments. They include sections of a footpath, stairway, wall, concrete pier block

remnants and landscaping.

By letter dated May 1, 2006, OCCL based on the information available notes that the walkway was built sometime between 1949 and 1975 as evidenced by historical aerial photography, after the establishment of the Conservation District in 1964 however it is not clear that the improvements were placed in the Conservation District (seaward of the shoreline) at the time of construction. As a consequence, the DLNR does not consider the subject encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District use Application to cure this matter. The letter further states: the removal of the walkway would have minimal beneficial impact on beach resources due to the limited size (5-6 feet wide) and the fact that a major structure is situated directly landward of the encroachment. In addition, the applicant provided a letter approval dated Sept. 22, 1967 by BLNR Chairman Jim Perry that permits the construction of the walkway. Public access along the shoreline will be diminished if the subject encroachment is removed.

The encroaching walkway and stairs serve as an integral part of the whole structure that provides safe (public) access along the shoreline and access to the restaurant. (Exhibit B)

In addition, the applicant has requested a non-exclusive easement over the area on which pier block remnants are located seaward of TMK (2)4-3-2: 27. The applicant proposes to keep the area containing the pier block remnants in its existing state. The OCCL, in its letter dated Oct. 16, 2007, noted that removal of these nonconforming structures (constructed in the 1950s) "would not affect the beach resource." The applicant request a non-exclusive easement over the land area containing the pier block remnants, which measures approximately 1,262 square feet in size.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no pertinent issues or concerns.

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-2-2:seaward of 4, 5, 7 and 4-3-2:seaward of 26, 27, 28, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands

terminated within the last five (5) years due to non-compliance with such terms and conditions.

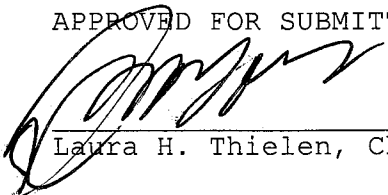
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Napili Kai, Ltd. covering the subject area for walkway, stairs, shower station, concrete pier block remnants and landscaping purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-2-2:seward of 4, 5, 7 and 4-3-2:seaward of 26, 27, 28, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



BY: J.H.H. & W.K. March 7, 1951

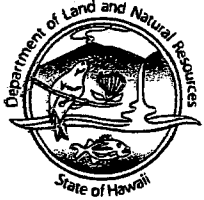
SOURCE: Taxation Maps Bureau

DWG. NO. 4019

POR. NAPILI 2 & 3, KAANAPALI, MAUI.



LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DE

May 1, 2006

Encroachment: MA-06-06

Mr. Paul Mancini
Mancini Welch & Geiger, LLP
C/O Napili Kai Beach Resort
33 Lono Ave. Suite 470A
Kahului, Hawaii 96732

Dear Mr. Mancini:

Subject: Shoreline Encroachment (Seawall) at the Napili Kai Beach Resort, Lahaina, Maui
TMK: (2) 4-3-002:028.

The Office of Conservation and Coastal Lands, Department of Land and Natural Resources (DLNR) has reviewed the submitted documentation, carried out a site visit January 24, 2006 and conducted related research to evaluate the environmental impact(s) of granting an easement for the subject encroachment. The encroachment in question is a concrete walkway, stairway and wall, located makai of the property line and within state-owned land and within the Conservation District (Figure 1).

The subject property is located in Napili, West Maui. A survey map by Valera, Inc based on a survey dated February 9, 2005 shows a 1,718 ft² portion of the walkway and stairs encroaching onto state land (Figure 2). This survey was not a state certified shoreline but delineates the improvements and the encroaching area. According to the information provided to the DLNR, it is believed the walkway is related to the construction of the Seahouse restaurant which was built in 1972.

The DLNR has determined that the basalt rock revetment to the north of the property is not related to the subject property and thus is not being considered as part of this assessment. Basalt rock fronting the Seahorse restaurant is considered naturally occurring and thus not an encroachment onto state lands. In addition, landscaped areas that were formerly mapped as encroachments have been remapped and the current request for easement is

EXHIBIT "B"

restricted to the concrete walkway, stairs and wall. The landscaped area located landward of the mapped encroaching walkway needs to be resolved the DLNR Land Division since it lies outside of the state Conservation District on unencumbered land (Figure 2).

The DLNR believes that information submitted regarding a BLNR 1967 approval letter for a walkway is related to the adjoining parcel TMK 4-2-2 and not the subject parcel TMK (4-3-2) as noted on the submitted letter (Figure 3). The DLNR has no record of any request for approval of a walkway or easement for the subject TMK. Further investigation reveals the walkway was built sometime between 1949 and 1975 as evidenced by historical aerial photography. There is evidence that the walkway was built sometime around 1972 in conjunction with the expansion of the Seahouse restaurant.

Based on the information available, it appears the improvements were initiated after the establishment of the Conservation District in 1964 however it is not clear that the improvements were placed in the Conservation District (seaward of the shoreline) at the time of construction. As a consequence, the DLNR does not consider the subject encroachment a Conservation District violation and will NOT be asking for an after-the-fact Conservation District Use Application to cure this matter.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the DLNR developed a "Shoreline Encroachment Information Sheet" that is intended to provide the DLNR with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted to the satisfaction of DLNR staff. Based on the information provided the DLNR has made the following determinations with regard to the subject improvements:

Surrounding Land Uses:

The surrounding uses are resort, commercial and public with a commercial restaurant immediately landward of the subject encroachment.

Beach Resources:

The beach resources are excellent. There is a high value recreational beach and exceptional water conditions and recreational opportunities.

Public Access:

There is direct public access along the shoreline at the site of the subject improvements. There is a public beach access walkway that provides lateral access along the coast that is the subject of this encroachment assessment.

Effect of Removing the Encroachment on:

Beach Resources: The removal of the walkway would have minimal beneficial impact on beach resources due to the limited size (5-6 ' wide) and the fact that a major structure is situated directly landward of the encroachment. The beach fronting the walkway appears slightly narrow possibly due to chronic or seasonal erosion at the north end. The DLNR has no evidence that the walkway actively interrupts or interferes with littoral process at this time, however it appears the beach system is attempting to migrate landward through wave forcing. The perceived benefits of removal of the walkway would be countered by the removal of well established public access along the shoreline. Since the walkway consists of only a small area and there is significant improvements immediately abutting it, removal of the walkway would not improve beach resources in any meaningful way unless the entire structure including the restaurant were considered for removal.

Public Access: Public access along the shoreline will be diminished if the subject encroachment is removed. The encroaching walkway and stairs serve as an integral part of the whole structure that provides safe (public) access along the shoreline and access to the restaurant.

Affect on Adjacent Properties: Removal of the improvements would have an unknown effect on the surrounding parcels. The effect of removing the subject improvements would reduce public access and not provide much gain in beach area. A vertical retaining wall (Seahouse restaurant wall) is situated directly landward of the walkway. Removal of the walkway and stairs would have an unknown effect on this structure. It is unknown what the design and structural engineering of the retaining wall is at this time but the walkway may play an important role in securing the retaining wall.

Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachments to remain through the issuance of an easement for the walkway and stairs would have minimal adverse impacts on natural resources, including beach resources and would provide for continued public access. **Therefore, the DLNR has no objections to an easement request being processed.**

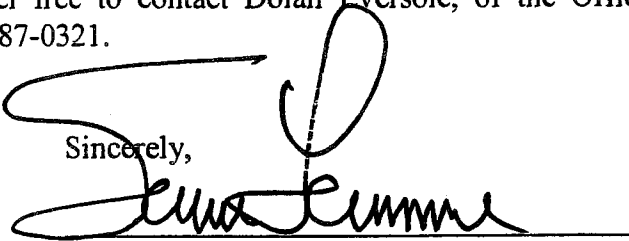
Pursuant to Chapter 171 Hawaii Administrative Rules (HAR), you are required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a \$500 fine for the encroachment.

The landscaped area located landward of the mapped walkway may require a revocable permit (RP) from the DLNR Land Division since it lies outside of the state Conservation District on unencumbered land.

Please contact the DLNR, Land Division Maui District office at (808) 984-8103 regarding the processing of an easement and RP. If you do not pursue an easement, you will be required to remove the encroachment.

We hope this letter helps resolve some of the outstanding issues regarding this property. If you have any questions, please feel free to contact Dolan Eversole, of the Office of Conservation and Coastal Lands at 587-0321.

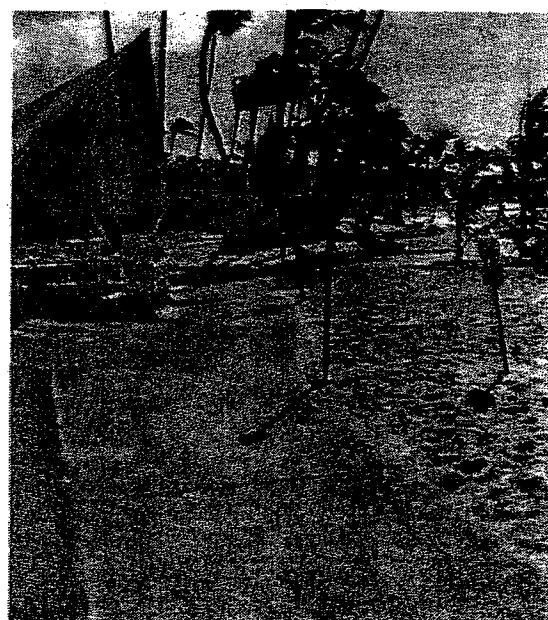
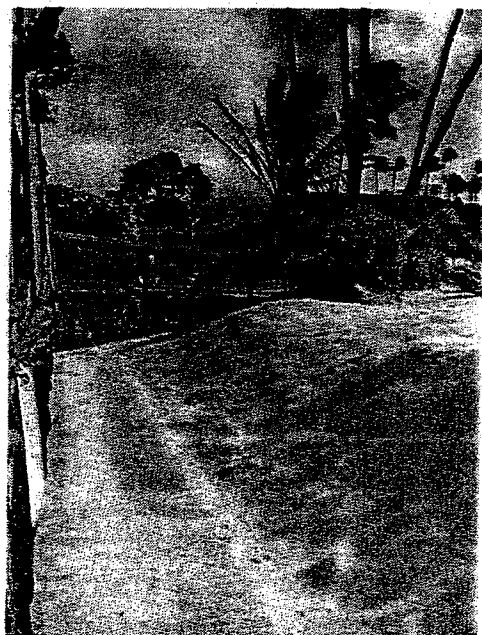
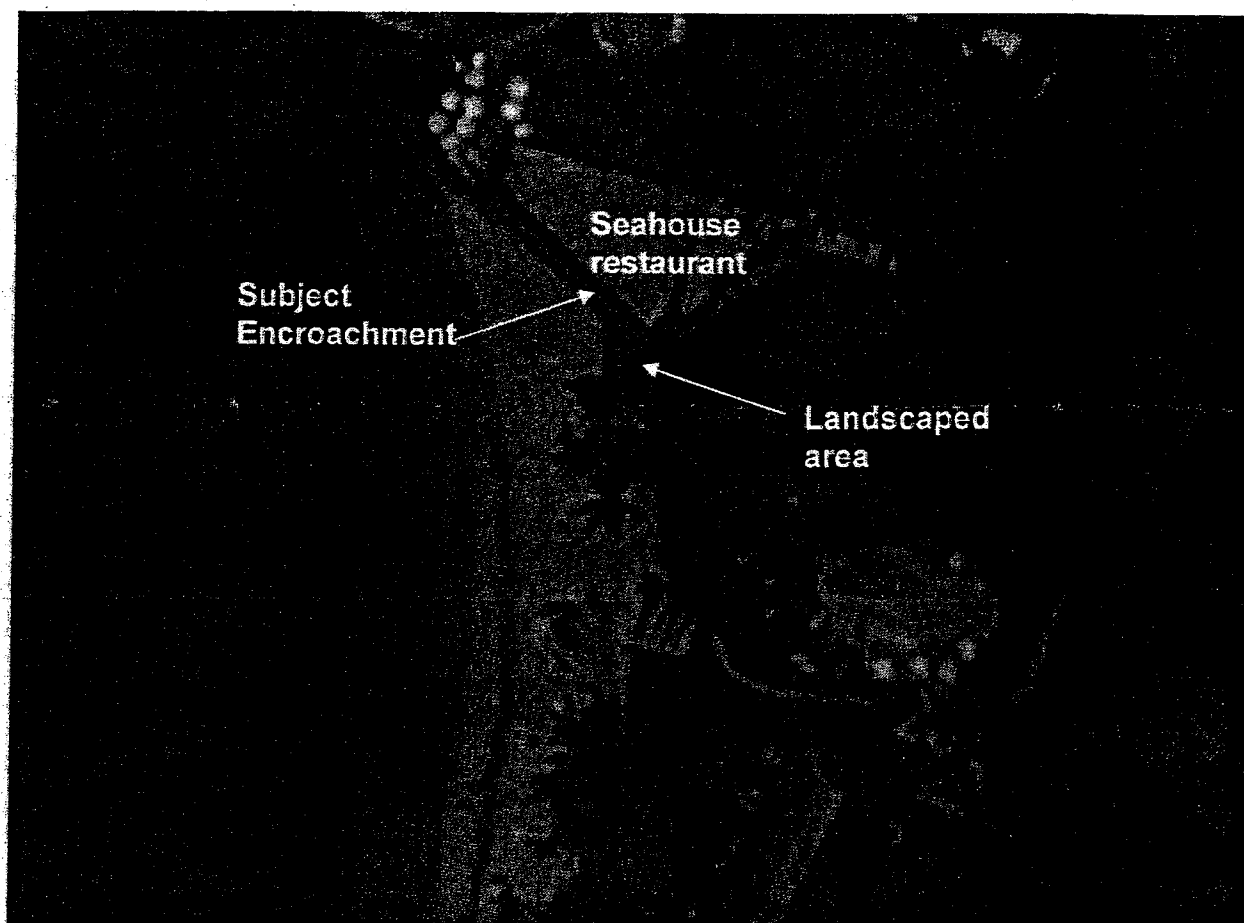
Sincerely,

A handwritten signature in black ink, appearing to read "Sam Lemmo", written over a horizontal line.

Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc: Maui Board Member
Maui Land Agent
Land Division
Chairperson's Office
Maui County Planning Department- Thorne Abbott
Andrew Nelson Frampton and Ward, LLC. 2073 Wells St. Ste 101 Wailuku, HI. 96793

Figure 1. Site Photographs



Shoreline Encroachment Napili Kai Beach Resort, Maui (2) -4-3-002:028.

5.

Figure 3. BLNR Letter

JOHN A. BURNS
GOVERNOR OF HAWAII



DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96808

September 22, 1967

Mr. J. C. Millar
Napili Kai, Ltd.
R. R. #1
Lahaina, Maui, Hawaii

Dear Mr. Millar:

In response to your request to Mr. James Shaw, our Maui Agent, to make a footpath along the rocky shore shown on Tax Plat 4-2-02, we see no objections to your proposal. We are strongly in favor of working with land owners to enhance Hawaii's natural beauty. Accordingly, you may proceed with your proposal.

Very truly yours,

BOARD OF LAND AND NATURAL RESOURCES


JIM P. FERRY
Chairman and Member

cc: Mr. James Shaw
Mr. Tai Sung Yang

Shoreline Encroachment Napili Kai Beach Resort, Maui (2) -4-3-002:028.